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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,

AT – VAGRA, (BHARUCH)

Regular Civil Suit No.:- 56 of 2019 (New)

Regular Civil Suit No.:- 274 of 2006 (Old)

Exhibit :- 168

Plaintiffs :

1. Hasanbhai Habibbhai Jat
2. Husenbhai Musabhai Jat
3. Usmanbhai Abdul Rehman Jat
4. Umarbhai Karimbhai Jat
5. Ibrahimbhai Habibbhai Jat

**R/O - All residing at Aliyabet, Taluka Vagra,
District Bharuch.**

V/S

Defendants :

1. Bharuch District Forest (West) Division

**R/O - District Forest Officer, Forest Department Office,
Bharuch**

2. On behalf of Government of Gujarat –
Collector, Bharuch

R/O - Office of the Collector, Bharuch

3. Karim Bhai Ibrahim
4. Ismailbhai Karim
5. Sulemanbhai Karim

6. Arabbhai Ismail
7. Mamad Mitha
8. Kasam Husen
9. Ahmad Hasan
10. Usmanbhai Mustafa
11. Alibhai Ibrahim
12. Fatemaben Habibbhai
13. Mitha Ibrahim
14. Fatemamad Ali
15. Nurmohammad Usman
16. Ismail Mitha
17. Siddiqbhai Hasan
18. Ismailbhai Mustafa
19. Hakimbhai
20. Mubarak Mamad
21. Salim Ali
22. Husen Mohammad
23. Yusufbhai Gulam Mamad
24. Yakub Yusuf
25. Umar Ibrahim
26. Isak Siddiq
27. Ali Hasan
28. Ali Mamad
29. Adas Jamiyal
30. Yakub Ali
31. Usman Abdulla
32. Suleman Abdul Rehman
33. Hasan Achar
34. Ali Ibrahimbad
35. Aham Mubarak
36. Hakim Abdulla
37. Usman Mohammad
38. Hanif Usman

39. Mohammad Sadiq
40. Ismail Ibrahim
41. Hasanbhai Mamad
42. Mamad Ishak
43. Ibrahimbhai Usman
44. Arafbhai Mustafabhai
45. Yakubbhai Umarbhai
46. Abdulla Allarakha
47. Yusuf Abdulla
48. Mamadbhai Isak
49. Yakubbhai Umarbhai
50. Ibrahim Musa
51. Yusuf Abdulla
52. Ahmad Abdul Rehman
53. Yakub Ibrahim
54. Suleman Husen
55. Abdul Rehman Mamad
56. Suleman Ali Mamad
57. Umar Husen
58. Mubarak Ali
59. Salim Hamzana
60. Ahmad Hamza
61. Nurmohammad Ali
62. Suleman Mirkhan
63. Mirkhan Mamad
64. Arab Zumaru
65. Husen Mamad
66. Usman Mamad
67. Karim Mohammad
68. Mithabhai Mumina
69. Jamiyal Musa (left-handed)
70. Musa Mamad
71. Ibrahimbhai Mitha

72. Hanifa Ismail
73. Yakub Husen
74. Yusuf Mamad
75. Umar Musa
76. Ali Suleman
77. Karimbhai Musa
78. Ibrahim Suleman
79. Abula Umar
80. Suleman Ali
81. Ismail Ahmad
82. Yakub Suleman
83. Sarifa Musa
84. Ismail Husen
85. Nasib Bhachaya
86. Ibrahim Jamal
87. Abdul Suleman
88. Sadiq Hakim
89. Jamiyal Musa
90. Ahmad Umar
91. Amina Allarakha
92. Umar Adam
93. Ishamitha
94. Husen Hakim
95. Ali Rehman
96. Ibrahim Usman
97. Fatma Mustafa
98. Mohammad Suleman
99. Amina Ali Mohammad
100. Abubakar Suleman
101. Amina Jamiyal
102. Usman Mitha
103. Umarbhai Mitha
104. Abdulla Ahmad

105. Suleman Ismail
106. Suleman Rehman
107. Ali Rehman
108. Sadiq Usman
109. Havaben Ahmad
110. Abdul Mohammad
111. Mohammadbhai Jamiyal
112. Mohammadbhai Hasan
113. Mithabhai Mobin
114. Ibrahim Mitha
115. Abdulla Allarakha

R/O - Defendant nos. 3 to 115 are residents of Aliyabet, Taluka Vagra, District Bharuch.

Subject :- Suit as representative as per Order-I, Rule 8.
Suit for declaration and injunction mandatory orders.

Appearance:-

Ld Advocate for the plaintiffs	Mr. A. T. Panwala
Ld A. G. P. for the Defendant No. 1 & 2	Mr. P. N. Parmar
Ld Advocate for the Defendant No. 3 to 115	Mr. R. T. Prajapati

- :: JUDGMENT :: -

1. The present suit was originally filed on in the Court of Principal Senior Civil Judge bearing R.C.S. No. 274/2006 and thereafter it was transferred to Principal Senior Civil Court, Vagra vide District Court, Bharuch Order no.Civil/A-16/1038/2019 and was renumbered as R.C.S. No.56/2019.

The plaintiff submitted that a group of approximately more than 500 people of 101 family of plaintiffs caste and religion reside at block no.1 admeasuring 8424 H. aare paiki

situated at Aliabet extension of Narmada river near Kaladara village of Ta.-Vagra, Dist.-Bharuch for more than 60 years and their main business is animal husbandry and they have been residing in the Dantivada extension in east direction of Aliabet in raw shades. It is further submitted that along with the whole family they are involved in the dairy business and residing at Aliabet extension whose residential jurisdiction lies with Kaladara village panchayat of Vagra Taluka and the panchayat has been collecting taxes for years from them for cattle grazing as well as the Government in the year 2005 also constructed school for education of their children and they possess ration card as well as enrolled in the voter list of Kaladara village of Vagra taluka and belonging to the muslim religion, there is cemetary and mosque near their residential extension and have been residing there since the time of their forefathers without any objection and the Government has also given them legal permission for fishing business. It is further submitted that the plaintiffs time and again filed applications in written as well as orally pleaded before the Government to allocate grazing land, plots and lease land as well as to appoint their residence in gamtal and provide life essential commodities however, even then the defendant did not take any actions and as they have not given permission for gamtal, they are deprived of benefits of residential schemes of Government and all the plaintiffs have been residing in the raw huts and hence, are also deprived of health benefits provided by the Government.

2. It is also submitted that the officials and employees of forest

department of defendant no.1 often in the disguise of taking measurements have been asking that the residential land of plaintiffs is reserved forest and have been threatening of vacating it however, the residential extension of the plaintiffs is not a reserved forest but uncultivated barren land and the defendant no.1 has no right to vacate the residential extension of the plaintiffs. It is further submitted that as per the revenue record of Kaladara gram panchayat, form no.6 of Aliabet, as per Government declaration, the land declared as reserved forest admeasures 607 hectare which is more than 1 km away in east from plaintiff's residential area in north south. Further, it is submitted that the declaration regarding the reserved forest was done in 1963 whose entry was done in the Government records after 21 years in 1984 and the defendant no.1 is enforcing it after 43 years which is against the provisions of Indian Forest Act and if it was enforced within time, then the plaintiffs would have put up their matter before the Government at that time and hence, the act of the defendant no.1 is illegal. It is also submitted that the plaintiffs have been residing at the said area for more than 60 years since the time of their forefathers and it is without any objection is in the possession of the plaintiffs and the defendant no.2 has accepted the same and by virtue of adverse possession, the plaintiffs are owners of the said property and the defendant no.1 has no concern with the said suit land however, even then on 28/03/2006 defendant no.1 came to the plaintiffs residential extension and threatened them and asked to remain present in his office and also threatened of filing

criminal case against them and hence, reason arose before the plaintiffs to filed the present suit.

3. The reliefs sought by the plaintiffs are as under ;
 - a. To declare that the plaintiffs have actual possession over approximately 2 scale kilometre in Dantavad extension situated in the east side of Aliabet in Narmada River within the limits of Kaladara village, Ta.-Vagra, Dist.-Bharuch.
 - b. To declare that the plaintiffs have become owner of the disputed land through adverse possession.
 - c. To declare that the disputed property is uncultivated barren land whose possession is with the plaintiffs and is out of the notification of defendant no.1.
 - d. To pass a mandatory order directing the defendant no.2 to allot the residential extension of disputed property for residential purpose to the plaintiffs.
 - e. To pass an injunction order stating that the defendant either by themselves or through servants, agents or officials shall not remove the plaintiffs from residential extension of the plaintiffs.
 - f. Any other relief which the Hon'ble Court may deem proper be granted.
 - g. To order the defendants to bear the costs of the suit.
4. The summons of the present suit was duly served upon the

defendants and the defendant no.1 appeared before the Court through Ld. A. G. P. and filed written statement vide Exh.-14 wherein it is submitted that as the suit is filed against the Government, a notice under Section 80 of C.P.C. was to be served and hence, the suit is not tenable and shall be dismissed. Further, it is submitted that the facts of para-1 of the plaint are not acceptable because the Government vide notification no.A.Kha./144/F.L.D/1665/73387/P dated 06/01/1966 (Annexure-A) under Section 20 declared 607.02 hectare of Aliabet as Reserved Forest and thereafter survey no.1 paiki 4046.86 hectare vide notification no.Gavan/2000/67/F.L.D./1678 /68065/K dated 19/07/2000 under Section 20 was declared as reserved forest and prior to declaring reserved forest, forest settlement report is prepared and on perusal of the said report, there is no mention of any caste residing over the said area. Further, while denying the facts of para-2 of the plaint, it is submitted that as per the notification of Government a total area of 4653.88 hectare of reserved forest is under the Forest Department and as per the Forest Conservation Act, 1980 and Indian Forest Act, 1927, the plaintiffs cannot be kept in forest and as per the writ petition no.202/1995 (Annexure-B), said forest cannot be taken into non-forest usage and if there is encroachment then it is to be forcefully vacated. Further, while denying the facts of para-3 of the plaint, submitted that since the day of notification, the concerned department was informed and asked to enforce the same and to prevent such kind of illegal conduct by the department, staff of the said department were also notified

about the same and hence, the facts of notification being enforced after 43 years is false. Further, while denying the facts of para-4 & 5 of the plaint, it is submitted that the total area of 4653.88 He. Aare of Aliabet was declared as reserved forest and as per the forest settlement report, there is no mention of any caste residing over there however, it is mentioned as scheduled tribes migrator tribes were residing regarding animal husbandry but it did not seem that they were permanently residing over there in the reserved forest area and at the time of measurement, the people of plaintiffs caste with huts were in the reserved forest area and as per the Forest Conservation Act, it is unauthorized entry in the Government land for whose removal the proceedings were done and further while denying the facts of para-6, it is submitted that the plaintiffs have no cause of action to file the suit, and their intention is to reside inside the reserved forest area and the plaintiffs are not entitled to get any reliefs and hence, prayed that the suit be dismissed.

5. On perusal of the record, the third parties were added in the present suit as defendant nos.3 to 115 who have filed their reply vide Exh.-48 wherein they have submitted that the suit of the plaintiffs is true and correct and currently the number of families residing in the said area has been increased from 101 families to 115 families and further they have supported the contentions of the plaintiffs and prayed that they are entitled to get the reliefs as prayed for and necessary orders may please be passed.
6. The plaintiffs have produced following oral & documentary

evidences in support of the case.

Oral Evidence :-

Sr. No.	Particulars	Exhibit
1.	Examination in chief of plaintiff no.1	67
2.	Examination in chief of plaintiff's witness	147

Documentary Evidence :-

Sr. No.	Particulars	Exhibit
1.	Copy of village form no.7/12 of revenue survey no.1 of Aliabet, Ta.-Vagra, Dist.-Bharuch from 1985 to 1999	69
2.	Copy of village form no.7/12 of revenue survey no.2 of Aliabet, Ta.-Vagra, Dist.-Bharuch from 1985 to 1999	70
3.	Copy of village form no.6 of hakkpatrak mutation entry dated 09/03/1984	71
4.	Copy of mutation entry no.3 dated 25/01/1987	72
5.	Mutation entry no.4 dated 23/01/1994	73
6.	Copy of mutation entry no.5 dated 19/02/2003	74
7.	Copy of mutation entry dated 09/03/1984	75
8.	Copy of mutation entry no.2 dated 09/03/1984	76
9.	Copy of mutation entry no.3 dated 25/01/1987	77
10.	Copy of mutation entry no.4 dated 23/11/1994	78
11.	Copy of mutation entry no.5 dated 19/02/2003	79
12.	Receipt of house tax of panchayat of Kaladara, Aliabet dated 20/08/1999	80
13.	Receipt of house tax of panchayat of	81

	Kaladara, Aliabet dated 20/08/1999	
14.	Receipt of house tax of panchayat of Kaladara, Aliabet dated 20/08/1999	82
15.	Copy of village form no.10	83
16.	Receipt of panchayat house tax of Kaladara, Aliabet	84
17.	Receipt of panchayat house tax of Kaladara, Aliabet	85
18.	Receipt of panchayat house tax of Kaladara, Aliabet	86
19.	Receipt of panchayat house tax of Kaladara, Aliabet	87
20.	Receipt of panchayat house tax of Kaladara, Aliabet	88
21.	Receipt of panchayat house tax of Kaladara, Aliabet	89
22.	Receipt of panchayat house tax of Kaladara, Aliabet	90
23.	Receipt of panchayat house tax of Kaladara, Aliabet	91
24.	Receipt of panchayat house tax of Kaladara, Aliabet	92
25.	Receipt of panchayat house tax of Kaladara, Aliabet	93
26.	Receipt of panchayat house tax of Kaladara, Aliabet	94
27.	Receipt of panchayat house tax of Kaladara, Aliabet	95
28.	Receipt of panchayat house tax of Kaladara, Aliabet	96
29.	Receipt of panchayat house tax of Kaladara, Aliabet	97
30.	Panchayat pass of animal details	98
31.	Voter list	99
32.	True copy of voter list of 2002	100

33.	Notice of Circle Officer, Vagra	101
34.	True copy of voter list of 2010	102
35.	Reply of Collector, Vagra	103
36.	Papers relating to land of gamtal	104
37.	Permission sought for constructing boundary around cemetery	105
38.	Reply of Collector, Bharuch	106
39.	Certificate of (MLA) local Government body	107
40.	Office copy of application filed before Collector by social worker	108
41.	Application for polling station by residents of Aliabet	109
42.	Voter identity card	110
43.	Voter identity card	111
44.	Gujarat today newspaper	112
45.	Sandesh newspaper	113
46.	Sandesh newspaper	114
47.	Publication regarding folk culture of Maldhari people of Kutchh in Gujarati language	122
48.	Copy of letter of STP program (12 months) for children for the year 2024-2025	149
49.	Application for the students	150
50.	Application regarding enrolment of students of Aliabet in school on the basis of their age	151
51.	Salary slip of Balmitra of Aliabet	152
52.	Copy of letter for starting 12 months special training program	153
53.	Copy of letter for constructing shade of school	154
54.	Copy of letter for allotment of land (at Aliabet)	155

55.	Copy of letter for allotment of land for primary school (at Aliabet)	156
56.	Land for primary school at Aliabet	157
57.	Resolution regarding allotment	158
58.	Letter regarding permission for 12 months special training program	159
59.	Visit book of primary school of Aliabet	160

The Ld. Advocate appearing on behalf of the plaintiff side has filed closing pursis vide Exh.-162 & 164 stating that the plaintiff side does not want to lead further any evidences and hence, the right was closed.

7. On perusal of the record, it seems that the defendant side did not appear before the Court to file examination in chief on oath however, they have produced documentary evidences vide Exh.-15 & 19 but have not filed any application to exhibit those documents.
8. Having heard to the above mentioned facts and circumstances & looking to the oral as well as documentary evidence on record, following issues arise before this court for just decision of the case.

:- Issues :-

1. Whether the plaintiffs prove that they are residing on the suit land more than 60 years ?
2. Whether the plaintiffs prove that suit lands are not reserved for forest by the Government and are only kharaba land (waste land) ?
3. Whether the plaintiffs prove that they have become owner

of suit land by law of adverse possession ?

4. Whether the plaintiffs prove that the land which are under their possession is excluded from the land reserved for forest by the Government ?
 5. Whether the plaintiff proves that they are entitled to get relief as prayed for ?
 6. Whether the defendant proves that plaintiffs suit is not maintainable for want of statutory notice ?
 7. What order and decree ?
8. My findings on the above issues are as under ;

Issues	Findings
Issue no.1	In Negative
Issue no.2	In Negative
Issue no.3	In Negative
Issue no.4	In Negative
Issue no.5	In Negative
Issue no.6	In Negative
Issue no.7	As per Final Order

9. **Oral evidence of the plaintiff :-**

The plaintiff no.1 filed examination in chief on oath vide Exh.-67 wherein the facts of the plaint have been reiterated and the oral and documentary evidences produced on record have been referred.

The plaintiff in the cross examination submitted that his native is Muhar, Ta.-Naliya, Kutchh, he did not study but can read and write, he was born at Aliabet for which he has no evidence, their primary business is animal husbandry. It is admitted that their Jat caste is considered as migrators, when they came to Aliabet, there were 15 to 20 families

which has now increased to 500 families. It is admitted that there is large space for fodder, it is admitted that as the Aliabet had fodder in huge amount, the residents of nearby 15 to 20 villages used the place for fodder. it is submitted that he knows that there were frequent droughts in Vagra taluka, and due to frequent droughts at Vagra taluka, people of nearby villages used to come to take fodder through boat and many people used to bring their animals and temporarily resided at Aliabet. It is admitted that there are lands of forest department at Aliabet, it is admitted that a total of 103 applicants filed application before forest department for allocation of lands, he is unaware of why the applications were rejected and submitted that they did not receive the lands and it has been 30 years since the application was filed before forest department for allocation of lands, they did not inquire about the applications, it is admitted that their names were listed in the voter list in the year 2002. He is unaware that for their residence and list the land as gamtal i.e., some extensions of Aliabet were prayed to be declared as village which were rejected by the Collector and the witness is unaware that the applications were rejected or what. It is admitted that few lands of Aliabet have been rented to G.N.F.C. It is admitted that since the suit was filed in 2006 till 2014 there were only 5 persons, it is admitted that the they were mostly between the age of 25 to 30 in the persons who were added as plaintiffs in 2014, it is admitted that they have produced the documents available with them to show that they are residing at Aliabet, it is admitted that they do not have any

other documents, it is admitted that they do not have any evidence showing they have any agricultural land or personal ownership lands at Aliabet, it is admitted that years ago they took permission from panchayat for cattle grazing at Aliabet.

10. **Oral evidence of the plaintiff's witness :-**

The plaintiff's witness filed examination in chief on oath vide Exh.-147 wherein it is submitted that he has produced documents as mentioned in the list of summons witness which have been marked as 115/1 to 115/14. It is submitted that he is working as alternate teacher at Kaladara, Aliabet for last 19 years, it is further submitted that his school was sent an application for 12 month special training program for 2024-2025 by the office of District Education Officer Office to the B.R.C. coordinator on 15/03/2024 which bears the signatures of District Education Officer, Bharuch, District Project Coordinator, District Primary Education Officer. It is further submitted that the document at mark 115/2 is application of total students studying at witness' school which bears the signatures of witness as assistant teacher. Further, the witness has referred the documentary evidences produced on record and stated their description.

On perusal of the record, it seems that even after being afforded sufficient opportunities, the defendant side did not appear to cross examine the plaintiff's witness and subsequently, the plaintiff side had filed an application vide Exh.-161 praying to close the right of the defendant side to cross examine the plaintiff's witness and the said

application was allowed and the right of the defendant to cross examine the plaintiff's witness was closed.

11. **Arguments :-**

Heard Ld. Advocates for both the respective parties at length.

The Ld. Advocate appearing on behalf of the plaintiff side submitted that the plaintiffs have been residing on the suit land for more than 60 years since the time of their forefathers and currently there are more than 1500 people of 115 families residing at that place and the reserved forest is situated away from the suit land where the plaintiffs reside and do business of animal husbandry and fishing at Aliabet within the jurisdiction of Kaladara village, Ta.-Vagra as well as a school was also started for the children of plaintiffs to study and the plaintiffs through adverse possession also have become owner and possessor of the suit land and hence, taking into consideration the facts and circumstances as well as the oral and documentary evidences placed on record, necessary orders may please be passed in the interest of justice.

The record indicates that the present matter, originally instituted on 05/04/2006 and was transferred to Principal Senior Civil Court, Vagra vide District Court, Bharuch Order no. Civil/A-16/1038/2019 and was renumbered as R.C.S. No.56/2019, is more than twenty years old and falls within the category of targeted and critical old matters. The matter was specifically fixed for final arguments on behalf of the defendant; however, neither the defendant nor the

learned Assistant Government Pleader (AGP) appeared, and no report or request for adjournment has been submitted. Despite sufficient opportunities having been granted earlier, the defendant's side has failed to avail the same. In such circumstances, this Court finds no justification to grant any further indulgence. Accordingly, the right of the defendant, through the learned AGP, to advance final arguments stands hereby closed vide order dated 20/04/2026, and the matter shall proceed further in accordance with law.

REASONING AND ANALYSIS

Issue nos.1 to 5 : -

As the issue nos.1 to 5 are inter-connected and co-related to each other hence, for the sake of brevity, convenience and to avoid repetition of facts, they are hereunder jointly discussed.

As the issue nos.1 to 5 are concerned with respect to the fact that whether the plaintiffs prove that they are residing on the suit land for more than 60 years, whether the plaintiffs prove that the suit lands are not reserved for forest by the Government and are waste lands, whether the plaintiffs have become owners of the suit land by law of adverse possession, whether the land under the possession of plaintiffs is excluded from the land reserved for forest by the Government and whether the plaintiffs prove that they are entitled to get reliefs as prayed for, to prove these issues, the plaintiff side has filed examination in chief on oath vide Exh.-67 wherein the plaintiff side has laid strong emphasis on the facts that they have been residing on the suit land since the time of their forefathers and do business of animal husbandry and fishing and currently there are approximately

1500 people of 115 families are residing there and as per Government declaration, the land declared as reserved forest admeasures 607 hectare which is more than 1 km away in east from plaintiff's residential area in north south. Further, it is submitted that the declaration regarding the reserved forest was done in 1963 whose entry was done in the Government records after 21 years in 1984 and the defendant no.1 is enforcing it after 43 years which is against the provisions of Indian Forest Act and if it was enforced within time, then the plaintiffs would have put up their matter before the Government at that time and hence, the act of the defendant no.1 is illegal. It is also submitted that the plaintiffs have been residing at the said area for more than 60 years since the time of their forefathers and it is without any objection is in the possession of the plaintiffs and the defendant no.2 has accepted the same and by virtue of adverse possession, the plaintiffs are owners of the said property and the defendant no.1 has no concern with the said suit land however, even then on 28/03/2006 defendant no.1 came to the plaintiffs residential extension and threatened them and asked to remain present in his office and also threatened of filing criminal case against them. Now, on perusal of the record, it seems that the third parties which are defendant nos.3 to 115 through their written statement have supported the contentions of the plaintiff side however, none of them came into witness box to examine themselves. Now, on the other hand, the defendant side in their written statement have submitted that the Government vide notification no.A.Kha./144/F.L.D/1665/73387/P dated 06/01/1966 (Annexure-A) under Section 20 declared 607.02 hectare of Aliabet as Reserved Forest and thereafter survey no.1 paiki

4046.86 hectare vide notification no. Gavan/2000/67/F.L.D./1678 /68065/K dated 19/07/2000 under Section 20 was declared as reserved forest and prior to declaring reserved forest, forest settlement report is prepared and on perusal of the said report, there is no mention of any caste residing over the said area. Further, it is submitted that as per the notification of Government a total area of 4653.88 hectare of reserved forest is under the Forest Department and as per the Forest Conservation Act, 1980 and Indian Forest Act, 1927, the plaintiffs cannot be kept in forest and as per the writ petition no.202/1995, said forest cannot be taken into non-forest usage and if there is encroachment then it is to be forcefully vacated.

Now, on perusal of the cross examination of the plaintiff side, it seems that the plaintiff has submitted that he was born at Aliabet but he has no proof to substantiate the fact that he was born at Aliabet. Now, on perusal of the record, it seems that the plaintiff has produced documentary evidences vide Exh.-69-114 & 122, 149 to 160 which include revenue records of the suit property, voter identity card, voter list, documents relating to establishment of school at Aliabet and receipts issued by panchayat for cattle grazing. Now, on perusal of revenue records in these documentary evidences, it seems that the documents mention the suit property bearing survey no.1 admeasuring 607 hectare is declared as reserved forest. Now, looking to the admission of the plaintiff in the cross examination, it seems that the plaintiff has admitted that their caste is migratory and they have no agricultural or personal land ownership records. Now, taking into consideration the documentary evidences produced by the plaintiff side, they have relied upon receipts issued by gram

panchayat for cattle grazing dated 02/02/2002 & 12/01/2006, voter list of year 2002, however, no document has been produced on record to show that they have been residing there for more than 60 years since the time of their forefathers. Further, they have produced their voter identity cards and voter list of 2002 which does not substantiates their contentions that they have been residing there for more than 60 years as the suit was filed in the year 2006. Further, on perusal of the Forest Settlement Report produced by the defendant on record vide mark 15/2, it mentions that no caste or tribe is residing on the suit land and as the forest settlement report is prepared prior to declaring the land as reserved forest, the contentions of the plaintiffs that they have been residing on the suit land for more than 60 years is not acceptable however, as per the report of the surveyor, it seems that there is presence of plaintiffs at suit land but not continuous and exclusively for 30 years or more and the evidence shows habitation but not uninterrupted possession for 30 years or more.

Further as the fact of issue no.2 is concerned, whether the suit lands are not reserved forest but kharaba (waste) lands, the plaintiffs have contended that the suit land is situated 1 kilometre away from the Government declared reserved forest however, the defendant side contended that the Government vide notification declared area of 4653.88 hectares as reserved forest which are supported by Forest Settlement Report. Now, on perusal of the document on record by the defendant side vide mark 65/8 which is map drawn by the Court Commissioner, it seems that the map mentions of Narmada river and beside it is reserved forest and in the middle of the reserved forest point ABCDEA is mentioned which shows and states that people of Kutchh Jat caste is residing

there and the said document also mentions that on perusal of record of 1988, it seems that land is reserved forest and hence, it seems that plaintiffs have been residing at the land declared by the Government as reserved forest. Now on perusal of the whole record, it seems that the plaintiffs have relied on receipts issued by the Gram panchayat for cattle grazing on the said land, voter list and voter identity cards as well as documents supporting school established on the suit land however, no authoritative Government record produced to contradict the notifications of 1966 & 2000 which are notifications declaring the suit land as reserved forest land and the permissions regarding the cattle grazing and tax receipts show usage but not classification of land as non-forest.

So far as the issue no.3 is concerned with respect to the fact that whether the plaintiffs have become owners by adverse possession, not taking into consideration the discussion of above, it seems that the documents on record suggest the presence of plaintiffs and usage of land however, the legal requirement for adverse possession states of continuous, hostile, exclusive possession against the true owner for statutory period and also taking into consideration the fact that payment of taxes to panchayat and applications for land allotment show acknowledgment of Government ownership and not hostile possession and the cross examination of the plaintiff confirms they sought permission for cattle grazing and land allotment and hence, it seems that their possession was permissive and not adverse.

Now, as the issue no.4 is concerned with respect to the fact that whether the land on which the plaintiffs are residing is

excluded from reserved forest, now looking to the submissions made by both the sides and documentary evidences placed on record, it seems that the plaintiffs have claimed that the reserved forest declared by the Government is situated 1 kilometre away from the land where the plaintiffs reside however, as per the report of surveyor, it seems that the plaintiffs are residing on the suit land declared as reserved forest which is only declared as 607 hectares. Further, the defendant side has produced on record that through two notifications, bearing notification no.A.Kha./144/F.L.D/1665/73387/P dated 06/01/1966 (Annexure-A) under Section 20 declared 607.02 hectare of Aliabet as Reserved Forest and thereafter survey no.1 paiki 4046.86 hectare vide notification no.Gavan/2000/67/F.L.D./1678 /68065/K dated 19/07/2000 under Section 20 was declared as reserved forest and prior to declaring reserved forest, forest settlement report is prepared and on perusal of the said report, there is no mention of any caste residing over the said area. On perusal of these notifications, it seems that the notifications clearly include survey no.1 as reserved forest at Aliabet and Forest Settlement Report mentions migratory tribes but no permanent settlement and the plaintiffs have not provided any authoritative Government record to substantiate the fact that their land is excluded from the land reserved for forest by the Government and hence, the plaintiffs have failed to prove exclusion of their land from the declared reserved forest.

This Court has integrated references to the **Indian Forest Act, 1927**, the **Forest (Conservation) Act, 1980**, and the **Supreme Court's ruling in T.N. Godavarman v. Union of**

India (1996) along with later rulings on adverse possession and it is pertinent to quote the relevant parts of the abovementioned which are as under ;

Indian Forest Act, 1927

- a. Section 20 empowers Government to declare reserved forest. Once notified, all private rights are extinguished unless recorded during settlement.
- b. Plaintiffs have not produced any record showing recognition of their rights during forest settlement.

Forest (Conservation) Act, 1980

- a. Section 2 prohibits use of forest land for non-forest purposes without prior approval of the Central Government.
- b. Plaintiffs' residence, cattle grazing, and animal husbandry constitute non-forest use. No approval was obtained.

Hon'ble Supreme Court of India in *T.N. Godavarman v. Union of India* (1996)

1. The Court held that "forest" must be understood in its dictionary sense, and all land recorded as forest in Government records falls under statutory protection.
2. It directed that no non-forest activity shall be permitted without prior approval under the Forest (Conservation) Act.
3. The doctrine of continuing mandamus ensures strict enforcement of forest protection.
4. This precedent squarely applies: plaintiffs' settlement, even if longstanding, cannot override statutory forest protection.

Adverse Possession Against Government Land

1. In *State of Haryana v. Mukesh Kumar* (2011), the Supreme Court held that adverse possession cannot defeat property rights under Article 300A of the Constitution.
2. In *Smt Jeanne Pinto v. Deputy Conservator of Forests* (2021) and *Shakeel Ahmad v. State of U.P.* (2024), the Court reiterated that encroachment on forest land cannot ripen into ownership.
3. Plaintiffs' payment of taxes and applications for land allotment show acknowledgment of Government ownership, not hostile possession.

Now, looking to the view of the statutory provisions of the **Indian Forest Act, 1927**, the **Forest (Conservation) Act, 1980** and the binding directions of the Hon'ble Supreme Court in *T.N. Godavarman v. Union of India* and subsequent rulings and taking into consideration the discussion of above issues, it seems that the plaintiffs have failed to establish any legal right over the suit land.

Now, as the issue no.5 is concerned with respect to entitlement of reliefs, it seems that the plaintiffs have not satisfactorily proved the facts of issue nos.1 to 4 that the plaintiffs have been residing on the suit land for more than 60 years, that the suit lands are not reserved for forest by the Government and are only Kharaba (waste land), also failed to prove that they have become owner of suit land by law of adverse possession, and failed to prove that the land which is under their possession is excluded from the land reserved for

forest by the Government. Further, the contentions of the plaintiffs have demonstrated habitation and community presence but failed to prove legal ownership or exclusion of the suit land from reserved forest, their documents show social recognition but not proprietary rights and hence, this Court is of the view that the possession of the plaintiffs is unauthorized and cannot ripen into ownership and therefore, this Court is of the opinion that the plaintiffs are not entitled to get the reliefs as prayed for and, therefore, in view of the above discussion, Issue nos.1 to 5 are answered In Negative.

Now, as the issue no.6 is concerned with respect to the maintainability of the suit for want of statutory notice under Section 80 of CPC. Before dwelling into this issue, it is pertinent to mention the provisions of Section 80 and Section 80(2) of the Code of Civil Procedure, 1908 which is as under ;

Section 80(1) CPC mandates that no suit shall be instituted against the Government or a public officer in respect of any act purported to be done in official capacity unless a prior notice of two months is served.

However, Section 80(2) CPC carves out an exception, permitting the institution of a suit without serving such notice, with the leave of the Court, where urgent or immediate relief is sought, subject to the condition that the plaintiff complies with the provisions contemplated therein.

In the present case, the plaintiffs had filed an application vide Exh. 6 seeking waiver of notice under Section 80 of CPC, which came to be allowed by the Court vide order dated 05/04/2006,

.subject to the condition that the plaintiffs shall comply with the provisions of Section 80(2) CPC. Thus, the institution of the suit without prior notice stands duly permitted by the Court in accordance with law. Further, the plaintiffs had also filed the application under Order 1, Rule 8 of CPC vide Exh. 7 and the said application for the representative suit was permitted by the predecessor court vide order dated 15/10/2014. Hence, in view of the aforesaid, the objection raised by the defendant regarding non-maintainability of the suit for want of statutory notice is devoid of merit. Accordingly, the Issue no. 6 is answered In Negative and, this court has pass the following final order in respect to issue No.7.

FINAL ORDER

1. The present suit of plaintiffs bearing R.C.S. no.56 of 2019 is hereby Dismissed.
2. No order as to costs.
3. Decree to be drawn accordingly.

Pronounced and signed today in open Court on 21st of April, 2026.

Date :- 21/04/2026

Place :- Vagra

R. C. Sodhparmar
Principal Senior Civil Judge
Vagra
UIC : GJ 01158